



**Raised Bill 6600
Public Hearing 3/2/09**

TO: MEMBERS OF THE PUBLIC HEALTH COMMITTEE

FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION

DATE: MARCH 2, 2007

**RE: RAISED BILL 6600 – AN ACT CONCERNING THE ESTABLISHMENT OF
THE SUSTINET PLAN**

While the Connecticut Trial Lawyers Association (CTLA) fully supports the goal of expanding access to quality health care, it is disappointed that the Sustinet plan's authors have failed to follow the example of the HealthFirst Connecticut Authority (HealthFirst), which, insofar as it addressed medical liability issues, focused on measures which increase patient safety. In contrast, the authors of the Sustinet plan, the Universal Healthcare Foundation, have created unprecedented special rights and immunities for physicians and hospitals, which will do great harm to those Connecticut citizens who suffer injuries as a result of negligent medical care. Section 7(c) of the Raised Bill completely undermines the goal of increasing access to quality health care by putting the goal of immunizing negligent medical care before that of increasing patient safety. CTLA completely rejects the premise that health care providers should be afforded special rights for merely doing what is in their patients' best interest.

Section 7 of Raised Bill 6600 contains eight subsections, seven of which describe mechanisms for the development of "recommended clinical care and safety guidelines." All eight, with the exception of Section 7(c), are consistent with the recommendations contained within the HealthFirst draft report, wherein "the Authority recommends at this time that greater emphasis be placed on improving safety and the reduction of medical injury" See, Draft Report at page 35. Any attempt at health care reform should have as its central goal an effort to avoid medical errors, as "over 75,000 people die every year from medical malpractice, more than the total number of deaths from automobile and workplace accidents combined." Baker, Tom, Journal of Law, Medicine & Ethics, "Reconsidering the Harvard Medical Practice Study conclusions about the validity of medical malpractice claims." Sept. 22, 2005.

Increasing patient safety should be the one goal that all sides of the healthcare debate can unify around and the development of "clinical care and safety guidelines" could have such an effect. Unfortunately, the Sustinet plan attempts to take away the rights of Connecticut citizens, injured or killed by negligent medical care, by allowing an appointed Board, rather than a court or jury, to determine if medical care was negligent under all of the applicable circumstances.

To the extent such clinical guidelines exist and/or could be developed, CTLA believes that physicians and hospitals should adopt them immediately. Health care providers should do so because they believe that such guidelines improve patient safety and outcomes. However, guidelines should NOT be adopted in order to create special rights and immunities for health care providers. As written, Section 7(c) of the

Raised Bill would lead to guidelines of the latter type, as the section provides health care providers with immunity from suit when they follow an applicable guideline. Given this section, the "health care provider committee" would have every incentive to create broad, general guidelines which could be used as a defense to even the most meritorious medical malpractice action. Such guidelines are all too common these days when medical societies such as the American College of Obstetrics and Gynecology have produced numerous "guidelines" which contradict well established medical authorities in an effort to insulate its members from liability.

Moreover, Section 7(c) of the Raised Bill contains no estimate of the cost of the "no fault" system it proposes to the State of Connecticut. According to every estimate, a "no fault" system which compensates patients injured by medical malpractice will either, (1) cost far more than the current system where negligent physicians must be proven liable in court; or (2) unfairly harm the patients who are most seriously injured by negligent medical care.

Insofar as any universal health care proposal encourages the adoption of best practice guidelines, health care providers should be encouraged to follow such measures. CTLA submits that a law which created a presumption of negligence would create a far greater incentive to follow an applicable guidelines than the provision of an unprecedentedly legal immunity.

In conclusion, CTLA would submit that HealthFirst has addressed the issue of patient safety in way that is much more consistent with the goals of increasing the availability of quality medical care than this Raised Bill and would urge the Committee to reject any bill which includes a provision like Section 7(c).

Thank you.